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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JEFFREY PHILLIP KAMRIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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70 pp

QUESTION PRESENTED FOR REVIEW

Do the five year federal statute of limitations contained in 18 U.S.C. 3282 and the Due Process Clause of the Fifth Amendment constitute a bar to Petitioner's extradition to Australia?

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IN THE

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JEFFREY PHILLIP KAMRIN,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JEFFREY PHILLIP KAMRIN petitions for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

PARTIES TO PROCEEDING

This proceeding originated on a complaint issued by the United States Attorney for the Western District of Washington, acting on behalf of the Government of Australia. Thereafter, a Federal Magistrate certified to the Secretary of State that extradition was proper and a petition for a Writ of Habeas Corpus was filed for and on behalf of Petitioner, JEFFREY PHILLIP KAMRIN, in the United States District court for the Western District of Washington, wherein JEFFREY PHILLIP KAMRIN was the Petitioner and the UNITED STATES OF AMERICA was the Respondent. In said Petition for a Writ of Habeas Corpus, Petitioner asserted that he should not be extradited to the Country of Australia; that Petition was eventually denied by the District Court. Petitioner appealed from the District Court's ruling to the United States Court of Appeals for the Ninth Circuit (C.A. No. 83-3836).

OFFICIAL AND UNOFFICIAL REPORTS

The disposition of the appeal in the United States Court of Appeals for the Ninth Cicuit was by an Opinion for publication filed and entered on February 14, 1984. A copy of this Opinion is reproduced as Appendix "A" herein.

Petitioner did not move the Court of Appeals for a rehearing.

JURISDICTIONAL STATEMENT

The jurisdiction of the United States District Court for the Western District of Washington was based initially on a complaint issued by the United States Attorney for the Western District of Washington, on behalf of the Government of Australia, under 18 U.S.C. §3184 and 27 U.S.T. 957, T.I.A.S. 8234, which requested a warrant for Petitioner's arrest. The jurisdiction of the District Court to entertain Petitioner's Petition for a Writ of Habeas Corpus existed under 28 U.S.C. §2241(1).

Jurisdiction of the Court of Appeals was based on Petitioner's timely appeal from the District Court's denial of his Petition for a Writ of Habeas Corpus under 28 U.S.C. §2253.

Jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1254(1).

THE MANDATE

The mandate issued at the same time the Court of Appeals affirmed the denial of the Writ of Habeas Corpus.

CONSTITUTIONAL, STATUTORY AND TREATY PROVISIONS

Amendment V of the United States Constitution provides, as pertinent:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

Title 18 United States Code, Section 3282 provides:

> "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

Petitioner also relies on the provisions of Articles II, V, VI, VII, X and XX of the 1974 Treaty of Extradition Between the United States and Australia, 27 U.S.T. 957, T.I.A.S. 8234 [The Treaty], the full provisions of which are set forth verbatim in Appendix "B" herein.

STATEMENT OF THE CASE

On or about October 6, 1982, in the United States District Court for the Western District of Washington, at Seattle, the Office of the United States Attorney filed a Petition for Extradition of JEFFREY PHILLIP KAMRIN, Petitioner herein, by way of a Complaint, Appendix "C" herein, asserting that Mr. KAMRIN was a fugitive from justice from the Country of Australia. Also asserted within the Complaint was the allegation that Mr. KAMRIN had been charged in a six count document filed December 19, 1980, in Australia, with having committed the crimes of Conspiracy to Cheat

and Defraud and Defrauding Persons by Mailing Willfully False Pretenses. Specifically, the Conspiracy allegation, Count I, alleged the dates of March 1, 1972, through December 31, 1974; Counts II through VI inclusive, each alleging Defrauding Persons by Making Willfully False Pretenses, alleged dates respectively of May 17, 1972, September 11, 1972, February 26, 1973, July 4, 1973, and October 10, 1973.

On October 20, 1982, the Government further filed a submission of documents for extradition, Appendix "D" herein, and finally on October 26, 1982, the Government filed through the Department of State, their Request for Extradition, Appendix "E" herein.[1] Set forth in the extradition papers was a copy of the Extradition Treaty which existed between the United States of America and Australia. The Court's attention is drawn to the fact that this Treaty was actually signed on May 14, 1974 and entered into force May 8, 1976. The Treaty itself was not ratified by the Australian Government until December 22, 1975. With the exception of the date of the signing of the Treaty in Washington, D.C., all dates alleged in the charging documents from the Government of Australia were dates which arose prior to the signing of the Treaty.

On Friday, October 15, 1982, JEFFREY PHILLIP KAMRIN, a resident of the State of Washington and a citizen of the United States, was arrested in Redmond, Washington as a result of the Complaint having been issued by the United States Attorney's Office. Eventually bail was set as to Mr. KAMRIN.

---

[1]Because this Request for Extradition continued a copy of the Treaty which is attached hereto as Appendix "B", a copy of the Treaty is not included in Appendix "E".

In the papers submitted by the Government, the basis for extradition was cited as "Article II(1)(15) of the 1974 Treaty on Extradition between the United States and Australia . . .", Page 7 of Appendix "B" herein. The Conspiracy allegation is also listed under Article II(4) of the Treaty, Page 8 of Appendix "B" herein.

Article VII of the Treaty provided, in pertinent part, as follows:

> "(1) Extradition shall not be granted in any of the following circumstances:
>
> . . .
>
> (b) when the prosecution for the offense has become barred by lapse of time according to the laws of the requesting State . . .". Page 11 of Appendix "B" herein.

Article X of the Treaty further provided:

> "The determination that extradition based upon the request therefore should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use such remedies and resources as we provided by that law." Page 12 of Appendix "B" herein.

Thus, it was argued before the District Court that the Statute of Limitations barred the extradition proceedings and further that Mr. KAMRIN should be afforded those rights granted to him in the United States, including his rights to due process.

As was pointed out below, the proceedings initiated in Australia were not done so until March, April and May of 1981. During these proceedings in Australia, evidence was taken at the Central Court of Petty Sessions, Liverpool Street, New South Wales (Australia) on the 30th and 31st days of March, the 1st, 2nd and 3rd days of April, and the

27th day of May, 1981, before the equivalency of a Magistrate in Australia.[2] The purpose of those proceedings was to produce the information which was necessary to support the request by Australia for extradition against Mr. KAMRIN. Again, the Court's attention is drawn to the fact that if the Court uses the last date of the alleged conspiracy, being December 31, 1974, a minimum of six and one-half years (6&1/2) had elapsed between the date of the alleged offenses and the initiation of any proceedings in Australia.

It had also been shown in the proceedings below that contained within the evidence was the fact that by order of the Supreme Court of New South Wales issued on the 28th day of April, 1975, the company known as Whale International was ordered to be "wound-up" and a liquidator was appointed. Page 3 of Appendix "F" herein. From 1975 to the date of his arrest, Mr. KAMRIN was a resident and domicile of the United States.

Numerous proceedings occurred in the Western District of Washington at Seattle where Mr. KAMRIN sought to have the charges against him dismissed. On March 29, 1983, the Honorable PHILLIP K. SWEIGERT, United States Magistrate, issued his Order, Appendix "G" herein, finding that there was a sufficient basis to extradite Mr. KAMRIN. In so issuing his Order, the Magistrate determined that extradition was not barred by the Statute of Limitations contained in Title 18 U.S.C. §3282. Thereafter, a Petition for a Writ of Habeas Corpus was filed in the District Court, Appendix "H", and this Petition itself was eventually denied.

---

[2]Appendix "F" herein, the Government's Reply Memorandum Re: Extradition, contains reference to these Australian Proceedings.

An appeal was taken from the denial of the Petition for a Writ of Habeas Corpus and filed for and on behalf of the Petitioner with the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit rejected Petitioner's arguments concluding that the absence of a specific contrary treaty provision should be interpreted as precluding Petitioner from raising a statute of limitations defense until his return to Australia. The Ninth Circuit also relied upon the cases of *Neely v. Henkle,* 108 U.S. 109 (1901) and *Holmes v. Laird,* 459 F.2d 1211 (D.C. Cir.), Cert. denied, 409 U.S. 869 (1972), for the proposition that United States Due Process rights cannot be extended extraterritorially to Petitioner's instant avail.

Petitioner contends that the Ninth Circuit's ruling is erroneous under the principle of "dual criminality" and because of due process protections as is hereinafter discussed.

ARGUMENT FOR WRIT

As indicated in the Statement of the Case, no alleged criminal act of Petitioner took place subsequent to December of 1974 and no complaint was issued until some six (6) years later. The applicable Statute of Limitations, if the same were applied by the United States, would have expired, and any further proceedings against Petitioner would have been barred by the Statute of Limitations and, at a minimum, by certain due process considerations. Unlike the United States, however, Australia does not have a Statute of Limitations. The Treaty involved, however, together with the Constitution and applicable case law, supports the position that extradition should not have been granted in the instant case and that

asylum jurisdiction should have precluded the extradition of Mr. KAMRIN.

Under the principle of "dual criminality", no offense is extraditable unless it is criminal in both the demanding and asylum jurisdiction, *Hu Wau-Leving v. Soscia,* 649 F.2d 914 (2nd Cir., 1981). The Treaty on Extradition between the United States and Australia embodies the doctrine of dual criminality and provides, in pertinent part, as follows:

> *"Article II*
>
> (1) Persons shall be delivered up according to the provisions of this Treaty for any of the following offenses provided these offenses are punishable by the laws of both Contracting Parties . . ."
>
> "(2) Extradition shall also be granted for any other offenses that are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States of America."

> *"Article V*
>
> (1) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up, if, in its discretion, it considers it is proper to do so."

> *"Article VI*
>
> Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offense with which he is charged or its equivalent had been committed in that territory . . ."

"Article X

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the law of the requested state and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law."

"Article XX

This Treaty applies . . . provided that no extradition shall be granted for an offense both Contracting Parties at the time of its commission."

It is suggested that these provisions and particularly Article VI of the Treaty and Article VIII of the Treaty, which provided that extradition should not be granted" . . . when the prosecution for the offense has become barred by lapse of time according to the laws of the requesting state. . ." should have barred the extradition of Mr. KAMRIN. Australia itself has no applicable statute of limitations. However, the language of Article VII is pregnant with implication that it was anticipated that Australia would adopt a statute of limitations, otherwise the reference to "laws of the requesting state" seems incongruous. Petitioner contends that this Court should impute a reasonable period of limitations to Australia in order to render the Treaty mutually responsive. Otherwise, a United States citizen could conceivably face extradition to Australia for crimes allegedly committed not only six but sixty years ago or more. Treaty obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. *Factor v. Laubenheimer,* 290 U.S. 276, 293, 54 S.Ct. 191, 195-196, 79 L.Ed. 315 (1933). Also, it is suggested that the laws of the United States and the due process standard should be

reviewed to determine whether or not extradition would have been appropriate. Particularly under Article VI, there must be a justification for the trial and reference is made to ". . . if the offense with which he is charged or its equivalent had been committed in that territory . . ."; that territory being the United States.

In light of the fact that the Treaty which existed between Australia and the United States allows Mr. KAMRIN to take advantage of any remedies and recourses and rights provided to him under the laws of the United States, the Appellant asserts that the instant case must be governed by the applicable Statute of Limitations in the United States and by due process considerations in the United States.

The importance of the Statute of Limitations and Due Process Standards cannot be understated. It has been held, for example, that:

> ". . . as the Supreme Court has stated, Statutes of Limitation "provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's rights to a fair trial should be prejudiced." *United States v. Marion,* 404 U.S. 307, 322, 92 S.Ct. 455, 464, 30 L.Ed. 2d 468 (1971). Criminal Statutes of Limitations are, therefore, liberally interpreted in favor of repose. *Toussie v. United States,* 397 U.S. 112, 115, 90 S.Ct. 858, 860, 25 L.Ed.2d 156 (1970)". *See Caplan v. Vokes,* 649 F.2d 1336, 1341 n.7 (9th Cir., 1981).

Although *Caplan* cited above involved the limitations provision in a Treaty between the United States and Great Britain, the holding as to the importance of the Statute of Limitations is equally applicable in the case-at-bar.

Marion as cited above is based, in part, upon a Due Process analysis and if in fact there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced

by the effectual running of the Statute of Limitations, then his Due Process rights would also be violated when there is a failure to initiate the charges within a reasonable length of time. At a minimum, since the Government of Australia in the instant case, for no apparent good reason, did not even initiate their charges until a point in time after an applicable United States Statute of Limitations had also run and further since the Petitioner is allowed to take advantage of laws of the United States, then there exists an irrebuttable presumption that the Petitioner's rights to a fair trial are already prejudiced by the running of the Statute of Limitations. If his rights are prejudiced, presumably by the running of the Statute of Limitations, they are likewise as prejudiced under a Due Process analysis, *a fortiori.* In the Court Below, the question never arose as to Mr. KAMRIN's motivation or intent, etc. for leaving Australia so there is no question of a tolling provision. The only two questions are whether or not the Statute of Limitations should and does bar the extradition and further, whether or not a Due Process consideration bars the extradition. There is no question, therefore, that the passage of time has, at a minimum, impaired the Defendant's opportunity to defend the instant case. The time periods involved were 1973 and 1974 and the Government of Australia did not ever move to effectuate any type of action against Mr. KAMRIN until 1980. The basis of the Statute of Limitations and the Due Process Clause of the United States Constitution is to prevent prejudice to a defendant caused by the passage of time and due process is a critical safeguard in the United States. If it is a critical safeguard in the United States and even in accordance with the Treaty which existed between the

United States and Australia, Mr. KAMRIN can take advantage of his Due Process rights.

Respectfully Submitted:

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JEFFREY PHILLIP KAMRIN

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the above and foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit was mailed this 10th day of April, 1984, postage prepaid, to the Honorable ROBERT BORK, Solicitor General, United States Department of Justice, Washington, D.C. 20530.

OSCAR B. GOODMAN, ESQ.

APPENDIX "A"

In the United States Court of Appeals
For the Ninth Circuit

JEFFREY PHILLIP KAMRIN, Petitioner-Appellant, vs. UNITED STATES OF AMERICA, Respondent-Appellee.	NO. 83-3836 DC # CV 83-501V OPINION

Appeal from the United States District Court
for the Western District of Washington
District Judge Donald S. Voorhees, Presiding

[Submitted February 9, 1984]

Before: WRIGHT and HUG, Circuit Judges, and EAST*, Senior District Judge.

WRIGHT, Circuit Judge

Kamrin seeks a writ of habeas corpus to prevent his extradition to Australia on the ground that the United States statute of limitation would bar the underlying prosecution on charges arising from acts in Australia ending in 1974. Because nothing in the extradition treaty between the two countries provides for application of the United States statute of limitation in this case or for full United States due process rights, we affirm the denial of the writ.

*Of the District of Oregon.

FACTS

Kamrin is a citizen and, since 1975, a resident of the United States. In December 1980, he was charged in Australia with conspiracy to cheat and defraud and with defrauding persons by making willfully false pretenses regarding investments in car wash franchises in that country between March 1972 and December 1974. Australia has no statute of limitation for these crimes. The United States statute of limitation for such charges is five years. 18 U.S.C. §3282.

The United States Attorney petitioned for Kamrin's extradition in 1982. Supporting documents cited the 1974 Treaty of Extradition Between the United States and Australia, 27 U.S.T. 957, T.I.A.S. 8234 [the Treaty]. Kamrin was arrested and released on his own recognizance.

In March 1983 a federal magistrate certified to the Secretary of State that extradition was proper. *See* U.S.C. §3184. Because that certification was not a final order warranting direct appeal, Kamrin petitioned for a writ of habeas corpus. Adopting the magistrate's memorandum and order, the district court denied it.

DISCUSSION

I. Standard of Review

No factual issues are raised. The question is one of interpretation and application of a treaty, which requires *de novo* review. *Cucuzzella v. Keliikoa,* 638 F.2d 105, 106-07 & nn. 1, 2 (9th Cir. 1981).

II. The Treaty's Limitations Provision

Article VII of the Treaty provides that "[e]xtradition shall not be granted . . . when the prosecution for the offense has become barred by lapse of time according to the laws of the *requesting* state." The Treaty, art. VII(1)(b) (emphasis added). The prosecution is not time-barred in Australia, the requesting state here.

To apply the United States statute of limitation would preclude prosecution and thus extradition. When the United States is the requested country, delay in seeking extradition may be relevant to the Secretary of State's final determination as to whether extradition may go forward. *Freedman v. United States,* 437 F. Supp. 1252, 1264 (N.D. Ga. 1977). The delay may not, however, serve as a defense to judicial extradition proceedings.

Generally, absent a specific treaty provision, the statute of limitation may be raised as a defense to criminal proceedings only after return to the requesting state. *Freedman,* 437 F.Supp. at 1263 (citing *Merino v. United States Marshal,* 326 F.2d 5 (9th Cir. 1963), *cert. denied,* 377 U.S. 997 (1964)). It may not always be clear whether a prosecution is time-barred, and the general rule allows the prosecuting state to resolve the issue. The extraditee has an opportunity to raise the defense in the requesting country. The provision in Article VII is consistent with the general rule.

Given the general rule, the absence of a contrary provision should be interpreted as an intention by the party states that the statute of limitation of the requested state does not apply. *Cf. Caplan v. Vokes,* 649 F.2d 1337, 1340 (9th Cir. 1981) (concerning treaty that *expressly* included party states' intention to apply statute of limitation of requested state). The parties did not intend for the United States statute of limitation to apply here.

III. Due Process

Article X of the Treaty provides that "the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by [the law of the requested state]." Kamrin claims that this entitles him to the due process right that underlies United States statutes of limitations: the right to a trial in which his defense is unimpaired by the passage of time.

Kamrin claims that *United States v. Williams,* 480 F. Supp. 482 (D. Mass. 1979), held that the right to be free on bail was a "remedy and recourse" provided by laws of the United States. The First Circuit reversed the district court decision in *Williams,* holding that a showing of "special circumstances" is required for bail in extradition proceedings. 611 F.2d 914, 915 (1st Cir. 1979). Williams had not made a sufficient showing, and his release was reversed. *Id.* at 914-15.

This "special circumstances" requirement creates a different standard for extradition cases than for federal criminal cases, where bail is granted unless the judicial officer determines that release will not reasonably assure the appearance of the defendant as required. 18 U.S.C. §3146(a). The additional showing required in extradition belies Kamrin's claim that bail is one of the remedies and recourses of United States law to which an extraditee is entitled. The analogy of a statute of limitation to bail does not help Kamrin.

More important, it has long been settled that United States due process rights cannot be extended extraterritorially. *Neely v. Henkel,* 180 U.S. 109 (1901). *See also Holmes v. Laird,* 459 F.2d 1211 (D.C. Cir.), *cert. denied,* 409 U.S. 869 (1972).

> [A] surrender of an American citizen required by treaty for purposes of a foreign criminal proceeding is unim-

> paired by an absence in the foreign judicial system of safeguards in all respects equivalent to those constitutionally enjoined upon American trials.

Holmes, 459 F.2d at 1219 (citing *Neely*, 180 U.S. 109).

Time may have eroded Kamrin's ability to present a defense in Australia, but time has not eroded the holding of *Neely*. One who commits a crime in a foreign country "cannot complain if required to submit to such modes of trial . . . as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty." *Neely*, 180 U.S. at 122-23; *Holmes*, 459 F.2d at 1218-19. The extradition treaty between Australia and the United States has not provided a different mode than application of the requesting state's statute of limitation.

CONCLUSION

Neither the language of the Treaty nor the United States Constitution require application of the United States five-year statute of limitation to prevent Kamrin's extradition. The denial of the writ is affirmed and extradition may be completed. The mandate shall issue now.

APPENDIX "B"

EXTRADITION

Treaty Between the United States of America and Australia

Signed at Washington May 14, 1974

Note by The Department of State

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Sat. 271; 1 U.S.C. 113)—

> ". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof of authentication thereof."

AUSTRALIA

Extradition

Treaty signed at Washington May 14, 1974;
Ratification advised by the Senate of the United States of America December 1, 1975;
Ratified by the President of the United States of America December 16, 1975;
Ratified by Australia December 22, 1975;
Ratifications exchanged at Canberra April 8, 1976;
Proclaimed by the President of the United States of America May 5, 1976;
Entered into force May 8, 1976.

By the President of the United States of America

A PROCLAMATION

Considering that:

The Treaty on Extradition between the United States of America and Australia was signed at Washington on May 14, 1974, the original of which Treaty is hereto annexed;

The Senate of the United States of America by its resolution of December 1, 1975, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty;

The Treaty was ratified by the President of the United States of America on December 16, 1975, in pursuance of the advice and consent of the Senate, and has been duly ratified on the part of Australia;

The respective instruments of ratification were exchanged at Canberra on April 8, 1976;

It is provided in Article XXI of the Treaty that the Treaty shall enter into force thirty days after the exchange of instruments of ratification;

Now, therefore, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Treaty, to the end that it shall be observed and fulfilled with good faith on and after May 8, 1976, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

In testimony whereof, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this fifth day of May in the year of our Lord one thousand nine hundred seventy-six and of the Independence of the United States of America the two hundredth.

[seal]

/s/ Gerald R. Ford

By the President:
/s/ Joseph John Sisco
Acting Secretary of State

TREATY ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA

The United States of America and Australia, desiring to make more effective the cooperation of the two countries for the reciprocal extradition of offenders, agree as follows:

ARTICLE I

Each Contracting Party agrees, under the conditions and circumstances established by this Treaty, reciprocally to deliver up persons found in its territory who have been charged with or convicted of any of the offenses mentioned in Article II of this Treaty committed within the territory of the other Contracting Party, or outside that territory under the conditions specified in Article IV of this Treaty.

ARTICLE II

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the following offenses provided these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death:

1. Murder or willful murder; assault with intent to commit murder.
2. Manslaughter.
3. Aggravated or willful wounding or injuring; assault occasioning actual bodily harm.
4. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.

5. Rape; indecent assault, including unlawful sexual acts with or upon children.
6. Illegal abortion.
7. Procuring, or trafficking in, women or young persons for immoral purposes; living on the earnings of prostitution.
8. Abandoning or exposing a child when the life of that child is or is likely to be injured or endangered.
9. Bigamy.
10. Kidnapping; child stealing; abduction; false imprisonment.
11. Robbery.
12. Burglary; housebreaking or any similar offense.
13. Larceny.
14. Embezzlement.
15. Obtaining any property, money or valuable securities by false pretenses or other form of deception.
16. An offense against the law relating to bribery.
17. Extortion.
18. Receiving any property, money or valuable securities knowing the same to have been unlawfully obtained.
19. Fraud by an agent, bailee, banker, factor or trustee, by a director or officer of a company or by a promoter of a company, whether existing or not.
20. An offense relating to counterfeiting or forgery.
21. Perjury; subornation of perjury; conspiring to defeat the course of justice.
22. Arson.
23. An act done with the intention of endangering the safety of any person traveling upon a railway or in any aircraft or vessel or other means of transportation.
24. Any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, of an aircraft.

25. Piracy, by statute or by law of nations; revolt on board a vessel against the authority of the master of the vessel.
26. Malicious injury to property.
27. An offense against the bankruptcy laws.
28. An offense against the laws relating to narcotics.
29. Dealing in slaves.
28. An offense against the laws relating to narcotics, dangerous drugs or psychotropic substances.
29. Dealing in slaves.

(2) Extradition shall also be granted for any other offenses that are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States of America.

(3) Extradition shall also be granted for any offense against a federal law of the United States of America of which one of the above-mentioned offenses is a substantial element, even if transporting or transportation or the use of the mails or of interstate facilities is also an element of the specific offense.

(4) Extradition shall also be granted for aiding, abetting, counseling or procuring the commission of, being an accessory before or after the fact to, or attempting or *conspiring to commit, any of the offenses mentioned in the preceding paragraphs of this Article.*

(5) *If extradition is requested for any offense mentioned in a preceding paragraph* of this Article and *that offense is punishable under the laws of both Contracting Parties* by a term of imprisonment exceeding one year or by death, *that offense shall be extraditable* under the provisions of this Treaty whether or not the laws of both Contracting Parties would place that offense within the same category of offenses

made extraditable by that preceding paragraph of this Article and whether or not the laws of the requested State denominate the offense by the same terminology.

ARTICLE III

(1) For the purposes of this Treaty, the territory of a Contracting Party means all the territory under the jurisdiction of that Contracting Party, including airspace and territorial waters, and also includes —

(a) any vessel registered in any territory under the jurisdiction of that Contracting Party; and

(b) any aircraft registered in any such territory provided that the aircraft is in flight when the relevant offense is committed.

(2) For the purposes of this Treaty —

(a) the territory under the jurisdiction of a Contracting Party includes the Territories for the international relations of which that Contracting Party is responsible;

(b) an aircraft shall be considered in flight from the moment when the power is applied for the purpose of take-off until the moment when the landing run ends.

ARTICLE IV

When the offense for which extradition has been requested has been committed outside the territory of the requesting State —

(a) if the United States of America is the requested State — the executive authority of the United States of America; or

(b) if Australia is the requested State — the Attorney-General of Australia;

shall have the power to grant the extradition if the laws of the requested State provide for jurisdiction over such an offense committed in similar circumstances.

ARTICLE V

(1) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

(2) For the purposes of this Article —

(a) a reference to the executive authority of a Contracting Party shall, in the case of Australia, be construed as a reference to the Attorney-General of Australia;

(b) Australian protected persons shall be deemed to be nationals of Australia; and

(c) the nationality of a person shall be determined to be that which he held at the time when he was charged with the offense for which his extradition is requested.

ARTICLE VI

Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory (where the person whose extradition is requested is found) either to justify his trial or committal for trial if the offense with which he is charged or its equivalent had been committed in that territory or to prove that he is the identical person convicted by the courts of the requesting State.

ARTICLE VII

(1) *Extradition shall not be granted in any of the following circumstances:*

(a) when the person whose extradition is requested is being proceeded against, has been tried and discharged or punished, or has been pardoned, in the territory of the requested State for the offense for which his extradition is requested;

(b) *when the prosecution for the offense has become barred by lapse of time according to the laws of the requesting State;* or

(c) when the offense in respect of which extradition is requested is of a political character, or the person whose extradition is requested proves that the extradition request has been made for the purpose of trying or punishing him for an offense of a political character.

(2) If any question arises whether a case comes within the provisions of subparagraph (c) of paragraph (1) of this Article, the requested State shall decide that question.

ARTICLE VIII

If, under the law of the requesting State, an offense for which the extradition of a person is requested, or any other offense for which he may be detained or tried under paragraph (1) of Article XIV, is subject to a penalty of death but the law of the requested State does not provide for such a penalty in a similar case, the requested State may recommend to the requesting State that any punishment imposed for any of those offenses be a less severe punishment.

ARTICLE IX

When the person whose extradition is requested is being proceeded against or is serving a sentence in the territory of the requested State for an offense other than that for which extradition has been requested, his surrender may be deferred until the conclusion of the proceedings and the full execution of any punishment that may be or may have been imposed on him.

ARTICLE X

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance (with the law of the requested State) and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law.

ARTICLE XI

(1) The request for extradition shall be made through the diplomatic channel.

(2) The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable laws of the requesting State including the law defining the offense, the law prescribing the punishment for the offense and the law relating to the limitation of the legal proceedings.

(3) When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting State and by such evidence as, according to the laws of the requested State, would justify his trial or committal for trial if the offense had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

(4) When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence, if any, passed upon him in the territory of the requesting State, by a statement, if applicable, showing how much of the sentence has not been served and by evidence proving that the person requested is the person to whom the judgment refers.

(5) The warrant of arrest and deposition or other evidence, given under oath or affirmed, and the judicial documents establishing the existence of the conviction, or certified copies of those documents, shall be admitted in evidence in the examination of the request for extradition when —

(a) in the case of a request by Australia — those documents or certified copies bear the signature, or are accompanied by the attestation, of a judge, magistrate or officer of Australia or are authenticated by the official seal of the Attorney-General and, in any case, are certified by the principal diplomatic or consular officer of the United States of America in Australia; or

(b) in the case of a request by the United States of America — the warrant, if any, bears an original signature, or the other documents are certified, by a judge, magistrate or officer of the United States of America and, in any case, are authenticated by the oath of a witness or sealed with the official seal of the Department of State on behalf of the Secretary of State or of the Department of Justice on behalf of the Attorney General.

ARTICLE XII

(1) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.

(2) The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offense been committed, or the person sought when convicted, in the territory of the requested State.

(3) On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person claimed.

(4) A person arrested upon such an application shall be set at liberty upon the expiration of forty-five days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article XI has not been received.

(5) Paragraph (4) of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE XIII

(1) If the requested State requires additional evidence or information to enable it to decide on the request for extradition, that State may request that such evidence or information be furnished within such period as it specifies.

(2) If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested State, he shall be discharged from custody.

(3) The discharge of a person from custody under paragraph (2) of this Article shall not bar the requesting State from submitting another request in respect of the same offense.

ARTICLE XIV

(1) A person extradited under this Treaty may be detained, tried or punished in the territory of the requesting State for any offense mentioned in Article II for which the person could be convicted upon proof of the facts upon which the request for extradition was based.

(2) Except as provided in paragraph (1) of this Article, a person extradited under this Treaty shall not be detained, tried or punished in the territory of the requesting State for an offense other than that for which extradition has been granted, or be extradited by that State to a third State, unless —

(a) he has left the territory of the requesting State after his extradition and his voluntarily returned to it;

(b) he has not left the territory of the requesting State within thirty days after being free to do so; or

(c) the offense concerned is one for which the requested State has consented to his detention, trial or punishment or to his extradition to a third State and is an offense mentioned in Article II.

(3) A request for the consent of the requested State under subparagraph (c) of paragraph (2) of this Article shall be

accompanied by such information and documents as are requested by that State.

(4) This Article does not apply to offenses committed after the extradition.

ARTICLE XV

A requested State, upon receiving two or more requests for the extradition of the same person either for the same offense, or for different offenses, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offense, the place where the offense was committed, the nationality and residence of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested State and the other requesting State or States.

ARTICLE XVI

(1) The requested State shall promptly communicate to the requesting State through the diplomatic channel the decision on the request for extradition.

(2) Where extradition of a person for an offense is granted, the person shall be conveyed by the appropriate authorities of the requested State to a port or airport in the territory of the State agreed between the State and the requesting State.

(3) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested State within such time as is prescribed by the laws of that State, he may be set at liberty, and the requested State may subsequently refuse to extradite that person for the same offense.

(4) Australia is not required to extradite a person before the expiration of fifteen days after the date on which he has been held judicially to be liable to extradition, or, if proceedings for a writ of habeas corpus have been brought, before the expiration of fifteen days after the final decision of the competent court has been given.

ARTICLE XVII

(1) To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all articles found in the requested State that have been acquired as a result of the offense or may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

(2) Subject to the qualifications of paragraph (1) of this Article, the above-mentioned articles shall, if the requested State so requests, be surrendered to the requesting State even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

(3) Where the law of the requested State or the rights of third parties so require, any articles so surrendered shall be returned to the requested State free of charge if that State so requests.

ARTICLE XVIII

(1) Expenses related to the transportation of the person sought to the requesting State shall be paid by the requesting State.

(2) The requested State shall make all necessary arrangements for, and meet the cost of, the representation of the requesting State in any proceedings arising out of a request for extradition.

(3) No pecuniary claim arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the requested State against the requesting State.

ARTICLE XIX

(1) The right to transport through the territory of one of the Contracting Parties a person surrendered to the other Contracting Party by a third State shall be granted on request made through the diplomatic channel.

(2) In the case of a national of the requested State, the request shall establish that conditions are present which would warrant extradition of the person by the State of transit.

(3) The request may be refused if reasons of public order are opposed to the transit.

(4) Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the State of transit in maintaining custody.

(5) The Party to which the person has been extradited shall reimburse the Party through whose territory such person is transported for any expenses incurred by the latter in connection with such transportation.

ARTICLE XX

This Treaty applies to offenses mentioned in Article II committed before, on or after the date on which this Treaty enters into force, provided that no extradition shall be granted for an offense committed before that date which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE XXI

(1) This Treaty is subject to ratification and the instruments of ratification shall be exchanged in Canberra as soon as possible.

(2) This Treaty shall enter into force thirty days after the exchange of instruments of ratification.[1]

(3) This Treaty may be terminated by either Contracting Party giving notice of termination to the other Contracting Party at any time and the termination shall be effective six months after the date of receipt of such notice.

(4) This Treaty shall terminate and replace, as between the Contracting Parties to the present Treaty, the Treaty on Extradition between the United States and Great Britain of December 22, 1931,[2] as made applicable to Australia.

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[1] May 8, 1976.
[2] TS S-19: 47 Stat. 2122.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at Washington this fourteenth day of May, 1974.

For the United States of America:
/s/ Kenneth Rush

For Australia:
/s/ Patrick Lhaw

APPENDIX "C"

United States District Court
Western District of Washington at Seattle

IN THE MATTER OF THE EXTRADITION OF JEFFREY PHILLIP KAMRIN,	))))	COMPLAINT (U.S.C. Title 18, §1384) 82-251M-01 NO.

A Fugitive From The Justice Of Australia
TO: The Honorable Philip K. Sweigert, United States Magistrate for the Western District of Washington.

Your complainant, an Assistant United States Attorney for the Western District of Washington, under oath deposes and says:

That, in the above matter, he acts for and in behalf of the government of Australia;

That he is informed, through diplomatic channels, that one JEFFREY PHILLIP KAMRIN, who is currently believed to be residing in Redmond, Washington, is duly and legally charged in a *six-count charge which was filed on December 19, 1980,* with having in Australia committed the crimes of *conspiracy to cheat and defraud* (Count I) and the crimes of *defrauding persons by making willfully false pretenses* (Counts II through VI);

That the said JEFFREY PHILLIP KAMRIN has fled outside the boundaries of Australia; that the warrant for the arrest of the said JEFFREY PHILLIP KAMRIN cannot be served in Australia; and that the said JEFFREY PHILLIP KAMRIN has *sought asylum* within the jurisdiction of the United States and may be found in the State of Washington and the Western District of Washington;

That the crimes of obtaining money by willfully false pretenses which the said JEFFREY PHILLIP KAMRIN is charged with having committed in Australia is among the offenses included by the terms of Article II(1)15 of the Treaty on Extradition between the United States of America and Australia, of May 14, 1974, 27 U.S.T. 957, TIAS 8234, which *entered into force on May 8, 1976,* which particularly refers to and includes crimes and offenses of *"obtaining any property, money or valuable securities by false pretenses or other form of deception,"* which treaty is still in full force and effect between the United States and Australia; and which treaty, by the terms of Article XX thereof, applies to the above-mentioned offenses committed before, on or after the date on which it entered into effect;

That the crime of conspiracy to cheat and defraud which the said JEFFREY PHILLIP KAMRIN is charged with having committed in Australia, is among the offenses included in the terms of Article II(4) of said Treaty of Extradition between the United States of America and Australia, which particularly provides that "[e]xtradition shall also be granted for . . . *conspiracy to commit any of the offenses* mentioned in the preceding paragraphs of this Article;"

That, through diplomatic channels, your complainant is informed and believes that the requisition for the hereinnamed JEFFREY PHILLIP KAMRIN has been made in conformance with said treaty and other treaties in force and effect accompanied by the formal papers upon which the demand for extradition is founded; *that your complainant will in due course present the formal extradition papers to the Court;*

Whereupon your petitioner, the complainant herein, acting under the authority and in the behalf stated, and pursuant to Title 18, United States Code, Section 3184 and Rules, United States District Court for the Western District of

Washington, Magistrate's Rule, MR 1(c), prays the consideration of this petition and that a warrant may issue for the arrest of the said JEFFREY PHILLIP KAMRIN, charged as aforesaid; that *he may be brought before this Court to the end that evidence of criminality may be heard* and, *if on such hearing, this Court determines the evidence sufficient to sustain the charge under the provisions of said treaty and treaties,* this Court shall certify the same to the Secretary of State of the United States at Washington, D.C. in order that warrant may issue upon the requisition of the proper authority of said foreign government for the surrender of the said JEFFREY PHILLIP KAMRIN, according to the stipulations of said treaty and treaties, and for such other action as this Court is required under the provisions of said treaty and treaties and the laws of the United States to take.

/s/ STEPHEN C. SCHROEDER
Assistant United States Attorney
Western District of Washington

Before me, a United States Magistrate for the Western District of Washington, personally appeared in the Western District of Washington the complainant, Stephen C. Schroeder, an Assistant United States Attorney for the Western District of Washington, on October 6, 1982, who, being duly sworn, says that the foregoing information is true, as he verily believes.

/s/ PHILIP K. SWEIGERT
United States Magistrate

APPENDIX "D"

United States District Court
Western District of Washington

IN THE MATTER OF THE EXTRADITION OF JEFFREY PHILLIP KAMRIN, A Fugitive From the Justice of Australia	NO. 82-215M-01 SUBMISSION OF DOCUMENTS FOR EXTRADITION

COMES NOW the United States of America, by and through Gene S. Anderson, United States Attorney for the Western District of Washington, and Stephen C. Schroeder, Assistant United States Attorney for said District, and pursuant to Title 18, United States Code, Section 3184, submits to the Court the documents prepared for the extradition of JEFFREY PHILLIP KAMRIN, said documents consisting of the following:

1. Declaration of Francis A. Armstrong, Acting Assistant Legal adviser, Office of the Legal Adviser for the Department of State.

2. Copy of Australian Embassy Note No. 285/81.

3. Requisition for the Extradition of JEFFREY PHILLIP KAMRIN from Peter Drew Durack, the Attorney-General of Australia.

4. Copy of the Extradition Treaty Between the United States of America and Australia, signed May 14, 1974.

5. Volumes 1 through 26, captioned "In the matter of the Requisition for the Extradition From the United States of America To The Commonwealth of Australia of JEFFREY

PHILLIP KAMRIN," each bearing the certificate of R. D. Nesen, Ambassador of the United States of America at Canberra, Australia, together with the signature and seal of Peter Durack, Attorney-General of Australia.

DATED this 20th day of October, 1982.

Respectfully submitted,

/s/ GENE S. ANDERSON
United States Attorney

/s/ STEPHEN C. SCHROEDER
Assistant United States Attorney

APPENDIX "E"

DEPARTMENT OF STATE

ll to whom these presents shall come, Greeting:

I Certify That ---------Frances A. Armstrong---------,

name is subscribed to the document hereunto annexed, was at the time

scribing the same Acting Assistant Legal Adviser, Office of the

Adviser---------, Department of State, United States

a, and that full faith and credit are due to his acts as such.

In testimony whereof, I, William P. Clark,
Acting

Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this eleventh

day of August, 19 81.

William P. Clark
Acting Secretary of State.

By Annie R. Maddux
Authentication Officer, Department of State.

...is cert... not valid if it is removed or altered in any way whatsoever

U.S. GOVERNMENT PRINTING OFFICE 16—81029-1

BEST AVAILABLE COPY

Declaration of Frances A. Armstrong

I, Frances A. Armstrong, declare and say as follows:

1. I am Acting Assistant Legal Adviser in the Office of the Legal Adviser for the Department of State, Washington, D.C. My office has responsibility for extradition requests, and I am charged with the extradition case of Jeffrey Phillip Kamrin.

2. In accordance with the provisions of the extradition treaty in full force and effect between the United States and Australia, the Embassy of Australia has submitted diplomatic Note No. 285/81, dated July 31, 1981, formally requesting Mr. Kamrin's extradition. A copy of that diplomatic note is attached to this declaration.

3. The relevant and applicable treaty provisions in full force and effect between the United States and Australia are found in the Extradition Treaty between the United States and Australia of May 14, 1974 which entered into force on May 8, 1976 (TIAS 8234). A copy of the Treaty is attached to this declaration.

4. In accordance with Article XVIII of the 1974 Treaty on Extradition between the United States and Australia, the Government of the United States provides legal representation in the United States courts for Australia in its extradition requests, and Australia provides legal representation in its courts for extradition requests made by the United States.

5. The substantive offenses for which Mr. Kamrin's extradition is sought are covered by Article II(1)(15) of the 1974 Treaty on Extradition Between the United States and Australia (TIAS 8234). Conspiracy to commit a listed offense is covered by Article II(4) of the Treaty.

I, Frances A. Armstrong, do this 10th day of August, 1981, affirm under the penalty of perjury that to the best of my knowledge the foregoing is true and accurate.

/s/ Frances A. Armstrong

Note No. 285/81

The Australian Embassy presents its compliments to the Department and has the honour to request the assistance of the Department of State in securing the arrest and extradition of Jeffrey Phillip Kamrin under Article XII of the Treaty on Extradition between the United States of America and the Australian Government.

Attached as required by the treaty is a copy of the requisition for extradition.

The Australian Embassy takes this opportunity to renew to the Department of State the assurances of its highest consideration.

The Secretary of State, Washington, D.C.
UNITED STATES OF AMERICA

Requisition for the Extradition of
Jeffrey Phillip Kamrin

I, PETER DREW DURACK, the Attorney-General of Australia, on behalf of the Government of Australia, hereby request that Jeffrey Phillip Kamrin, who is now in the United States of America and is accused in the State of New South Wales of —

- one offence of conspiracy to cheat and defraud, and
- five offences of false pretences contrary to section 179 of the Crimes Act of 1900 (New South Wales), be returned to Australia.

DATED this 22nd day of July, 1981.

/s/ Peter Drew Durack
Attorney-General

APPENDIX "F"

United States District Court
Western District of Washington

IN THE MATTER OF THE EXTRADITION OF JEFFREY PHILLIP KAMRIN, A fugitive from the Justice of Australia.	)	NO. 82-215M-01 REPLY MEMORANDUM RE EXTRADITION

I.

This matter has been rescheduled for extradition hearing to March 4, 1983, at 9:00 a.m. before the Honorable Philip K. Sweigert, Magistrate of the above-entitled court. The defendant remains at liberty on his personal recognizance, having been released by the Honorable Donald S. Voorhees on November 8, 1982.

II. REVIEW OF PERTINENT FACTS

The extradition requisition in this matter has been supported by 24 volumes consisting of the evidence taken and the exhibits produced at the Central Court of Petty Sessions, Liverpool Street, Sidney, New South Wales (Australia), on the 30th and 31st days of March, the 1st, 2nd and 3rd days of April, and the 27th day of May, 1981 before a Stipendiary Magistrate in and for the State of New South Wales. The purpose of these proceedings was to produce the information

necessary to support the requisition issued by the government of Australia to the United States of America seeking the extradition and return of JEFFREY PHILLIP KAMRIN.

Exhibit 2 to Volume 4 of these proceedings is a copy of the charges actually filed against Mr. KAMRIN. These charges were filed in the Supreme Court of New South Wales on December 19, 1980. They are enumerated in the list of charges as follows:

	Charge	*Date of Offense*
Count I:	One charge of conspiracy to treat and cheat and defraud such persons who were, or who might be induced to become, prospective franchisees.	Mar. 1, 1972 to Dec. 31, 1974
Count II:	A charge of defrauding persons by making a wilfully false pretense.	May 17, 1972
Count III:	A charge of defrauding persons by making a wilfully false pretense.	Sept. 11, 1972
Count IV:	A charge of defrauding persons by making a wilfully false pretense.	Feb. 26, 1973
Count V:	A charge of defrauding persons by making a wilfully false pretense.	July 4, 1973.
Count VI:	A charge of defrauding persons by making a wilfully false pretense.	Oct. 10, 1973

Contained among the evidence taken and exhibits produced in these proceedings additionally is clear evidence of the fact that by order of the Supreme Court of New South Wales issued on the 28th of April, 1975, the company known as Whale International was ordered to be "wound-up" and a liquidator was appointed.

It is clear from the recitation of the dates of these offenses as indicated in the charges filed in the Supreme Court of New South Wales *vis a vis* the filing date of the charges, that had these been instituted here in the United States pursuant to the appropriate federal counterpart statutes these offenses would be barred by the statute of limitations, specifically 18 U.S.C. §3282.

III. ARGUMENT AS TO THE APPLICABILITY OF 18 U.S.C. §3282

The government has argued (Memo., pp. 13-16) that the statute of limitations of the requested state (in this case the U.S.) has no relation to the extraditability of Mr. KAMRIN. The government directs the Court's attention solely to article VII of the treaty between the two countries in making this argument.

KAMRIN would assert that the article VI of the treaty can in these circumstances serve to raise the statute of limitations incorporated in 18 U.S.C. §3282 as a bar to extraditability. This article reads as follows

> Article VI: Extradition will be granted only if the evidence is found sufficient according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offense with which he is charged or its equivalent had been committed in that territory . . .

Caplan v. Vokes, 649 F.2d 1336 (9th Cir. 1981), lays down two specific criterion with regard to the determination of extraditability. These are:

> 1. Arguments and findings relating to whether each charge satisfies the treaty requirements are part of the record that should be developed in the extradition court in the first instance, where the full adversary participation of counsel permits extensive inquiry into such questions. (649 F.2d 1344)
> 2. In our view, an adequate extradition proceeding must include in this record a specific delineation, as to each charge, of the legal theories under which the requesting country's law by which the accused's conduct is alleged to constitute an extraditable offense, together with an identification of the corresponding offenses in this country relied on to show that the "dual criminality" requirement has been met. (649 F.2d 1344)

It is clear that in rendering a determination of extraditability, the fact-finding reviewer must examine the facts as put forward by the government to determine the applicability of article VI of the treaty. The standard would be the same standard applied in this country for purposes of proceeding such as those under Federal Rule of Criminal Procedure 5.1 *if* such a proceeding was considerably more elaborate to conform with the requirements laid down in *Caplan v. Vokes, supra, and* such a determination were not advisory (as is the case in Rule 5.1) but instead necessary to determine whether the charge should go forward.

By that standard it is clear that in the situation where the government has brought forth an "Information" or "Indictment" which asserts charges barred by the statute of limitations, and further adduces facts for probable cause determination which again create an affirmative defense limitations, the court should clearly refuse to commit the defendant for trial.

It is not only clear that the statute of limitations is a complete bar to prosecution but further that the burden is on the government under United States law to establish that the facts charged occurred within a timeframe that would not be barred by such limitations. *Grunewald v. U.S.*, 353 U.S. 391, 1 L.Ed.2d 1931, 77 S.Ct. 1963 (1957). Additionally, the question of whether the offense is barred by the statute is appropriately raised by a motion to dismiss the Information if the violation of the statute of limitations is apparent on the face of the pleading. *Jaben v. U.S.*, 333 F.2d 535, 538 (8th Cir. 1964), *aff'd*, 381 U.S. 214, 85 S.Ct. 1365, 14 L.Ed.2d 345 (1965), *rehearing denied*, 382 U.S. 873, 86 S.Ct. 19, 15 L.Ed.2d 114 (1965).

If a motion pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, in the nature of a motion to dismiss (formerly called a plea in bar) pleads as part of the motion facts clearly capable of determination before trial, this factual determination is the proper subject of a preliminary hearing on this issue. *U.S. v. Dierker*, 164 F.Supp. 304 (1958). See also, *U.S. v. Zavin*, 190 F.Supp. 393 (1961), a case which was determined by the court based upon a hearing such as that described in *U.S. v. Dierker, supra.*

There is a cogent discussion of these issues in *United States v. Andreas*, 374 F.Supp. 402 (1974) at 405-07. There, at 374 F.Supp. 406, the court quoted the following language from *United States v. Covington*, 395 U.S. 57, 60, 89 S.Ct. 1559, 1561, 23 L.Ed.2d 94 (1969):

> Federal Rule of Criminal Procedure 12(b)(1) states that: 'Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.' A defense is thus 'capable of determination' if trial of the facts surrounding the commission of the alleged offense would be of no assis-

> tance in determining the validity of the defense. Rule 12(b)(4) allows the district court in its discretion to postpone determination of the motion to trial, and permits factual hearings prior to trial if necessary to resolve issues of fact peculiar to the motion.

The court in *Andreas* found this to be particularly applicable to the assertion of the bar of the statute of limitations.

Where, as here, the government must perforce submit facts for the probable cause determination which leads to extraditability which on their face would create the bar of the statute of limitations, under the procedures in use here in the "requested state" the defendant would neither be committed for trial or tried. In these circumstances the statute of limitations creates not only a complete bar to the analysis of "evidence . . . sufficient . . . to justify (the) trial or committal for trial (of Kamrin) if the offense with which he is charged or its equivalent had been committed in (this country)" but also operates as an absolute bar to extraditability.

V. CONCLUSION

The Treaties of Extradition operate like contracts between nations and as such must be strictly construed on the language contained within the treaties themselves. In this instance by the clear language of article VI of this treaty, the statute of limitations applicable in this country as the "requested state", to-wit: 18 U.S.C. §3282 becomes particularly pertinent to the determination of extraditability. More to the point, it becomes an absolute bar to the extraditability of JEFFREY KAMRIN.

DATED this 4th day of February, 1983.

Respectfully submitted,
CODY & HATCH, INC., P.S.

/s/ George Wm. Cody and for
/s/ Oscar B. Goodman
Counsel for Jeffrey Kamrin

APPENDIX "G"

United States District Court
Western District of Washington at Seattle

IN THE MATTER OF THE EXTRADITION OF JEFFREY PHILLIP KAMRIN, A fugitive from the Justice of Australia.	CASE NO. C82-215M-01 MEMORANDUM AND ORDER

The United States, acting on behalf of the Government of Australia, seeks to extradite defendant Kamrin to Australia to face charges that he conspired to cheat and defraud and defrauded persons in that country by making willfully false statements while he was employed by a company called Whale Car Wash during the period March 1, 1972 through December 31, 1974. In substance it is charged that fraudulent misrepresentations were made to entice investors into purchasing car wash franchises. The charges were not filed in Australia until December 19, 1980, over five years following the date on which the offenses were allegedly committed.

The parties have stipulated to the following:

(1) Defendant Kamrin is the person accused in the charges which are the subject of the extradition request;

(2) The factual allegations which are the subject of the charges are supported by sufficient probable cause as an evidentiary matter;

(3) The pertinent offenses are offenses punishable by terms of imprisonment in excess of one year by the respective laws of the United States and Australia.

The only issue which remains for resolution by the Court is whether extradition is barred by the five year statute of limitations contained in 18 U.S.C. §3282. I conclude that it is not.

It is the general rule that, in the absence of a treaty provision, a statute of limitations may not be raised as a defense in extradition proceedings. E.g. *Merino v. United States Marshal,* 326 F.2d 5 (9th Cir. 1963), *cert. denied,* 377 U.S. 997 (1964). She also *Freedman v. United States,* 437 F.Supp. 1252, at 1263 to 1265 (N.D. Ga. 1977). The case relied on by defendant, *Caplan v. Vokes,* 649 F.2d 1338 (9th Cir. 1981), is not to the contrary. The treaty provisions there involved expressly provided that extradition would not be granted if the prosecution was barred by the limitations period of either the requesting or requested state.

The only provision of the treaty between Australia and the United States which deals with limitations is Article VII. Article VII provides that extradition shall not be granted if the prosecution is barred "by lapse of time according to the laws of the *requesting* state." (Emphasis added.) It is undisputed that Australia has no applicable limitations period. The treaty's express reference to the limitations period of only the requesting state would appear to foreclose any argument by defendant that the limitations period of 18 U.S.C. §3282 — the limitations period of the requested state — is applicable. Defendant, however, contends that Article VI of the treaty permits him to raise the defense.

Article VI provides in pertinent part that:

> "Extradition will be granted only if the evidence is found sufficient according to the laws of the territory where the person whose extradition is requested is found, either to justify his trial or committed for trial if the offense with which he is charged or its equivalent had been committed in that territory."

Article VI deals only with the sufficiency of the evidence to support the essential elements of the offense charged. It has nothing to do with availability of defenses. In light of the express reference in Article VII to the limitations period of only the requesting state, to construe Article VI as defendant suggests would clearly frustrate the intent of the parties to the treaty. The analysis of the district court in *Freedman, supra,* is compelling.

The evidence of record, being sufficient to sustain the charges under the provisions of the applicable treaty and to warrant defendant's extradition, the undersigned does hereby certify this matter, together with the evidence of record, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of the Government of Australia, for the surrender of defendant Kamrin, according to the stipulations of the applicable treaty; defendant is hereby committed to the custody of the United States Marshal for this district until such surrender shall be made. The Court's Order of commitment is, however, stayed for a period of fifteen (15) days from the date hereof to provide the defendant with an opportunity to file an application for a writ of habeas corpus seeking review of this Order. Upon the filing of such application, defendant Kamrin will be continued on bond pending a ruling on the merits of any such petition.

DATED this 29th day of March, 1983.

/s/ Philip K. Sweigert
United States Magistrate

APPENDIX "H"

In the United States District Court
Western District of Washington at Seattle

JEFFREY PHILLIP KAMRIN, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent.
Case No. 82-215M-01

PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, JEFFREY PHILLIP KAMRIN, by and through his counsel, OSCAR B. GOODMAN, ESQ. and GEORGE WILLIAM CODY, ESQ. and files the instant Petition for Writ of Habeas Corpus seeking the relief of the Petitioner from the custody of the United States of America.

Said Petition is made and based upon the attached Analysis of Facts and Points and Authorities.

Respectfully Submitted:

/s/ Oscar B. Goodman, Esq., and
/s/ George William Cody, Esq.

By_____
/s/ George William Cody, Esq.
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Memorandum of Points and Authorities
In Support of Petition
For Writ of Habeas Corpus

I.

ANALYSIS OF FACTS

In October of 1982, Petitioner, JEFFREY PHILLIP KAMRIN, a resident of the State of Washington and a citizen of the United States of America was arrested in Redmond, Washington as a result of certain proceedings initiated by the United States of America for the Western District of Washington acting for and on behalf of the Government of Australia charging Mr. KAMRIN with one count of Conspiracy to Cheat and Defraud and five counts of Defrauding Persons by making Willfully False Pretenses.

Numerous proceedings occurred in the Western District of Washington at Seattle wherein the Petitioner sought to have the charges dismissed against him. Eventually, on March 29, 1983, the Honorable PHILIP K. SWEIGERT, United States Magistrate issued his order, a copy of which is attached hereto and incorporated by reference herein as Exhibit No. 1, finding, in effect, that there was a sufficient basis to cause the extradition of Mr. KAMRIN; said Order was stayed for a period of fifteen (15) days to allow the filing of a Petition for Writ of Habeas Corpus.

The original charges stemming against Mr. KAMRIN originated on December 19, 1980 in Australia. At this time, Mr. KAMRIN was a resident of the State of Washington, residing there with his family. The underlying charges result-

ing in a complaint being brought in Australia on December 19, 1980 arose as a result of alleged activities being conducted in Australia by Mr. KAMRIN during the years 1972 through 1974. In 1975, Mr. KAMRIN was a resident and domicile of the the United States of America. Independent of the Memorandum and Order of Magistrate SWEIGERT, Mr. KAMRIN has remained at liberty on bail in Washington.

A brief analysis of the Australian proceedings is necessary for a full and complete understanding of the instant Petition. The charges in respect of which the extradition proceedings were instituted were filed in the Supreme Court of New South Wales on December 19, 1980 and consisted of one charge of Conspiracy to Cheat and Defraud Persons who were franchisees of Whale Car Wash and five charges of Defrauding People By Making A Willfully False Pretense concerning Whale Car Wash. According to the evidence taken by a stipendiary magistrate in New South Wales in relation to proceedings for the extradition of Mr. KAMRIN from the United States of America to Australia, said evidence being taken in March, April and May of 1981, there was adduced that while Whale Car Wash was incorporated on April 17, 1972 that KAMRIN was an employee of the company from the date of its incorporation and was a Director of the company from February 8, 1974 until December 13, 1974. The company was under the direct supervision and control of one SYDNEY CHAMBERS during this time. It was alleged that fraudulent representations were made to entice investors to purchase franchises during the period of time in question. A review of the summary of extra proceedings showed that the last overt act allegedly participated in by Mr. KAMRIN was in August of 1974. Shortly thereafter, Mr. KAMRIN left the company to engage in other business ventures and then

returned to the United States in 1975 residing in Portland, Oregon and then in the State of Washington. As of April 28, 1975, the parent company of Whales Car Wash was ordered to windup its business by the Supreme Court of New South Wales and a liquidator was appointed.

The evidence will show, during the hearing on extradition, that in 1976 the New South Wales Attorney General began his investigation into the Whale Car Wash situation. An unusual procedure was utilized in that the prosecution went directly to the Australian Supreme Court and commenced proceedings in a summary fashion instead of following the usual procedure of going to the Courts of Petty Sessions. There was no committal hearing (similar to our preliminary hearing in the United States) but, rather all that the prosecution was required to do was to provide the defense with copies of witnesses' statements and exhibits which the prosecution would tender at a Supreme Court trial. Had KAMRIN been noticed with the intent of the prosecution he would have been able to avail himself of a preliminary hearing wherein witnesses must be called by the prosecution and then be available for cross-examination, and a finding would have had to have been made by the Magistrate as to whether or not a *prima facie* case had been established. The defense would have had the opportunity of calling witnesses and of giving evidence. Had KAMRIN been permitted the preliminary hearing, he would have been entitled at the conclusion of *all* evidence to have had the Magistrate decide whether a reasonable jury would convict. If the answer would be no, then KAMRIN would have been discharged. By not notifying KAMRIN as to the proceedings, even though he was not a "fugitive", KAMRIN was deprived of the critical rights which would have been afforded to him.

II.

ARGUMENTS

A.

The Statute of Limitations Should Bar The Extradition of Jeffrey Phillip Kamrin.

Through documentation provided by the United States of America and through evidence adduced at prior proceedings, no alleged criminal act of JEFFREY PHILLIP KAMRIN took place subsequent to December of 1974. No complaint was, in fact, issued until some six (6) years later. The applicable statute of limitations, if the same were applied by the United States, or the State of Washington Statutes, would have expired based upon this fact pattern and any further proceedings against Mr. KAMRIN would have in fact been barred by the statute of limitations. Unlike the United States of America, however, Australia does not have a statute of limitations. It is suggested, however, that the Treaty involved together with the Constitution and applicable case law supports the proposition that a Petition for Writ of Habeas Corpus can be granted based on the fact that the asylum jurisdiction would preclude any prosecution against Mr. KAMRIN.

Under the principle of "dual criminality", no offense is extraditable unless it is criminal in both the demanding and asylum jurisdiction. *See Hu Wau-Leung v. Soscia,* 649 F.2d 914 (2nd Cir., 1981). It is further generally agreed that Federal law rather than the law of the specific state applies. *See Greci v. Birknes,* 527 F.2d 956 (1st Cir., 1976). The

Treaty on Extradition between the United States and Australia embodies this Doctrine of Dual Criminality and provides, in pertinent part, as follows:

"*Article II*

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the folowing offenses provided these offenses are punishable by the laws of both Contracting Parties . . ."

"(2) Extradition shall also be granted for any other offenses that are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States of America."

"*Article V*

(1) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up, if, in its discretion, it considers that it is proper to do so."

"*Article VI*

Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offense with which he is charged or its equivalent had been committed in that territory . . ."

"*Article X*

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law."

"*Article XX*

This Treaty applies . . . provided that no extradition shall be granted for an offense . . . which was not an offense under the laws of both Contracting Parties at the time of its commission."

The only provision of the Treaty between Australia and the United States of America which deals with limitations of actions is embodied in Article VII which provides that extradition shall not be granted if the prosecution is barred "by lapse of time according to the laws of the Requesting State." While Australia has no applicable limitations period, Article VI, as quoted above, is suggested to bar the extradition of Mr. KAMRIN, particularly when viewed in conjunction with Title 18 U.S.C. §3282. As indicated in Article VI, there must be justification for his trial and reference is made to ". . . if the offense with which he is charged or its equivalent had been committed in that territory. . ." that territory, being the United States.

In *Caplan v. Vokes,* 649 F.2d 1336 (9th Cir., 1981), an extradition case, the Court recognized that under the principle of dual criminality, no offense is extraditable unless it is criminal in both jurisdictions. The Court also spoke in terms of the Statute of Limitations and held that it provided predictability by specifying a limit beyond which there is a irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. *United States v. Marion,* 404 U.S. 307, 322 (1971). *Marion, supra* is based upon, in part, a due process analysis and if, in fact, there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced by the effectual running of the Statute of Limitations, then there could, in effect, be no such similar charges in the United States. The Court further found in *Caplan, supra* that criminal Statutes of Limitations are liberally interpreted in

favor of defendants. *Toussie v. United States,* 397 U.S. 112 (1970). The basis of the Statute of Limitations and, more applicably, the Due Process Clause of the United States Constitution is to prevent prejudice to a defendant caused by the passage of time and is a critical safeguard in the United States. It is further suggested that although the Australian-United States Treaty may be silent on the applicable Statute of Limitations question, that other provisions as already cited should bar the instant prosecution; particularly in light of the fact that there could be no prosecution of the Defendant in the United States. It is, therefore, requested that this Honorable Court deny the extradition of Mr. KAMRIN.

CONCLUSION

Based upon the above, it is respectfully submitted that a Writ of Habeas Corpus be issued and that the United States of America be foreclosed from extraditing JEFFREY PHILLIP KAMRIN.

Respectfully Submitted:

Oscar B. Goodman, Esq., and
George William Cody, Esq.

By_____
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Office-Supreme Court, U.S.
FILED
JUL 6 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1651

In the Supreme Court of the United States

OCTOBER TERM, 1983

JEFFREY PHILLIP KAMRIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
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In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1651

JEFFREY PHILLIP KAMRIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the federal statute of limitations, 18 U.S.C. 3282, and the Due Process Clause bar his extradition to Australia.

1. Following a hearing conducted before a United States magistrate in the Western District of Washington pursuant to 18 U.S.C. 3184, petitioner was certified to the Secretary of State as being subject to extradition to Australia (Pet. App. 1g-3g). Petitioner challenged the certification of extraditability by filing a petition for a writ of habeas corpus in the district court. The district court denied relief and the court of appeals affirmed (Pet. App. 1a-5a; 725 F.2d 1225).

Petitioner is a citizen of the United States who has resided here since 1975 (Pet. App. 2a). In December 1980, petitioner was charged in Australia with conspiracy to cheat

and defraud and with defrauding persons by making willfully false pretenses regarding investments in car wash franchises between March 1972 and December 1974 (*ibid.*). In 1982, Australia requested petitioner's extradition under the Treaty on Extradition, May 14, 1974, United States-Australia, 27 U.S.T. 957 (Pet. App. 2a, 3e).[1]

At the hearing before the magistrate, petitioner stipulated that (1) he is the person named in the charges that are the subject of the extradition request; (2) the extradition documents submitted by Australia to support its request establish probable cause; and (3) the offenses charged are punishable by terms of imprisonment of at least one year by the respective laws of the United States and Australia (Pet. App. 1g). Petitioner claimed, however, that his extradition is barred by the five-year federal statute of limitations, 18 U.S.C. 3282, because more than five years elapsed between the date of the offenses and the date petitioner was charged. Australia has no statute of limitations for those offenses (Pet. App. 2a). The magistrate rejected petitioner's claim (Pet. App. 1g-3g), and the district court denied a petition for a writ of habeas corpus seeking review of the magistrate's certification of extraditability.

The court of appeals affirmed (Pet. App. 1a-5a). The court rejected petitioner's contention that the federal statute of limitations bars his extradition. It noted that "Article VII of the Treaty provides that '[e]xtradition shall not be granted . . . when the prosecution for the offense has become barred by lapse of time according to the laws of the *requesting* state' " (Pet. App. 3a (court's emphasis)). The court pointed out that petitioner's prosecution "is not time-barred in Australia, the requesting state here" (*ibid.*). In

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[1]Pursuant to Article XX (27 U.S.T. 973), the Treaty applies to offenses committed before, on, or after the date on which it entered into force (Pet. App. 17b).

addition, the court observed that, as a general matter, absent a specific treaty provision, the statute of limitations may be raised as a defense only after the defendant's return to the requesting state. *Ibid.* (citing *Merino* v. *United States Marshal,* 326 F.2d 5 (9th Cir. 1963), cert. denied, 377 U.S. 997 (1964); *Freedman* v. *United States,* 437 F. Supp. 1252, 1263 (N.D. Ga. 1977)). The court noted, in this regard, that "[i]t may not always be clear whether a prosecution is time-barred, and the general rule allows the prosecuting state to resolve the issue" (Pet. App. 3a). Accordingly, the court concluded that, "[g]iven the general rule, the absence of a contrary provision should be interpreted as an intention by the party states that the statute of limitation of the requested state does not apply" (*ibid.*).[2]

The court of appeals also rejected petitioner's claim that Article X of the Treaty (27 U.S.T. 966), which guarantees that " 'the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by [the law of the requested state],' * * * entitles him to the due process right that underlies United States statutes of limitations" (Pet. App. 4a). The court held (*id.* at 4a-5a), in reliance on *Neely* v. *Henkel,* 180 U.S. 109 (1901), and *Holmes* v. *Laird,* 459 F.2d 1211 (D.C. Cir.), cert. denied, 409 U.S. 869 (1972), that petitioner cannot challenge his extradition on the ground that the requesting nation does not offer the same rights and privileges he can claim under United States law.

2. a. Petitioner appears to contend (Pet. 9-10) that his offense does not satisfy the "dual criminality" requirement of the United States-Australia Extradition Treaty because

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[2]The court of appeals pointed out that "delay in seeking extradition may be relevant to the Secretary of State's final determination as to whether extradition may go forward," but it stated that such delay "may not * * * serve as a defense to judicial extradition proceedings" (Pet. App. 3a).

the United States would be barred by 18 U.S.C. 3282 from prosecuting him. Under the dual criminality requirement of the Treaty, an offense for which extradition is sought must be punishable under the laws of both contracting parties by at least one year's imprisonment or by death. Petitioner's theory apparently is that the offenses of which he has been charged in Australia would not be punishable in the United States because they are outside the federal statute of limitations.

This contention is insubstantial. Contrary to the unstated assumption underlying petitioner's contention, the statute of limitations is not an element of an offense. See *United States* v. *Doyle*, 348 F.2d 715, 718 (2d Cir.), cert denied, 382 U.S. 843 (1965); *Freedman* v. *United States*, 437 F. Supp. at 1264. Thus, even though the United States would be barred from prosecuting petitioner on the charges-just as it would be barred from prosecuting for lack of a proper venue-that fact has no bearing on whether petitioner's conduct constitutes an offense under the laws of the United States for purposes of construing the dual criminality provision of the Extradition Treaty.[3]

b. Petitioner also asserts (Pet. 10) that the language of Article VII (27 U.S.T. 965) — conditioning extradition upon the limitations period of the requesting state — "is pregnant with implication that it was anticipated that Australia would adopt a statute of limitations." Petitioner

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[3]Article VI of the Treaty (27 U.S.T. 964), on which petitioner purports to rely, does not assist him. Article VI requires only that there be sufficient evidence, according to the laws of the requested state, to justify trial or commitment for trial of the extraditee. Similar provisions in other treaties have repeatedly been construed to require a showing of probable cause to believe that the extraditee has committed the offenses with which he has been charged. See, *e.g.*, *Eain* v. *Wilkes*, 641 F.2d 504, 507-508 (7th Cir.), cert. denied, 454 U.S. 894 (1981). Petitioner has conceded the existence of probable cause. See page 2, *supra*.

therefore requests this Court to "impute a reasonable period of limitations to Australia" (Pet. 10); otherwise, petitioner warns, the Treaty would not "effect the apparent intention of the parties to secure equality and reciprocity between them." *Factor* v. *Laubenheimer*, 290 U.S. 276, 293 (1933).

Petitioner's extraordinary request is patently frivolous. The clear intent of the Treaty partners in Article VII was to ensure that each partner would have no greater and no lesser right to pursue a prosecution of an extradited defendant than it would of one apprehended within its own borders. Conditioning extradition on the limitations provision of the requesting state effects that intent. But there is nothing in the Treaty that requires either requesting state to enact a limitations statute.

The power of international extradition is solely the creature of treaty, and it is the sovereign that determines the conditions for extradition. If it chose, the United States could agree to extradite a person for an act that is not unlawful in this country. See *Gallina* v. *Fraser*, 278 F.2d 77, 79 (2d Cir.), cert. denied, 364 U.S. 851 (1960); cf. *Factor* v. *Laubenheimer*, 290 U.S. at 299-300. The United States has not chosen to condition extradition to Australia upon Australia's compliance with the limitations statute of the United States. It is certainly neither the responsibility nor the prerogative of the courts to "impute a reasonable period of limitations to Australia," as petitioner suggests (Pet. 10).[4]

c. Petitioner appears to rely (Pet. 11) on Article X of the Treaty (27 U.S.T. 966) in support of his claim that he can

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[4]As the court of appeals observed (Pet. App. 3a), petitioner's complaint concerning the delay in seeking his extradition is more appropriately addressed to the Secretary of State, who will make the final determination whether to surrender petitioner to Australian authorities. See *Freedman* v. *United States*, 437 F. Supp. at 1264.

invoke the federal statute of limitations and the Due Process Clause of the United States Constitution as a bar to his extradition.[5] Because the provision refers to "remedies and recourses," petitioner argues (Pet. 11 (emphasis added)) that it entitles him "to take advantage of *any* remedies and recourses and rights provided to him under the laws of the United States." Petitioner's argument is based on a misreading of the Treaty.

Article X simply declares that the law of the requested state governs whether extradition shall be granted and that a person whose extradition is sought shall be permitted to avail himself of whatever procedures are prescribed by the law of the requested state. Thus, Article X entitled petitioner to have his case considered in accordance with the provisions of 18 U.S.C. 3181-3195, which govern extradition proceedings, and to seek whatever review the laws of the United States provide. The process that is due a person in an extradition proceeding, however, is not identical to the process accorded a defendant prosecuted for violations of federal criminal law.[6] Article X ensures that a person in petitioner's position will be accorded the process due to the subject of an extradition request; it does not authorize this or any other court to survey Australian criminal procedure for compliance with the Due Process Clause of the United States Constitution.

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[5]Article X provides (Pet. App. 10b):

> The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law.

[6]For example, an extraditee is not granted a direct appeal from a certification of extraditability. Instead, he must seek review by way of a petition for habeas corpus, and the reviewing court has a very limited scope of review. *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925); *Collins* v. *Miller*, 252 U.S. 364, 369 (1920).

As the court of appeals concluded (Pet. App. 4a-5a), petitioner's argument is contrary to this Court's holding in *Neely* v. *Henkel*, 180 U.S. 109 (1901). There, a United States citizen challenged the constitutionality of his extradition to a foreign country that did not provide an accused all the rights, privileges and immunities of the United States Constitution. The Court's response then is equally applicable now (180 U.S. at 123):

> [Petitioner's United States] citizenship does not give him an immunity to commit crime in other countries, nor entitle him to demand, of right, a trial in any other mode than that allowed to its own people by the country whose laws he has violated and from whose justice he has fled. When an American citizen commits a crime in a foreign country he cannot complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty stipulations between that country and the United States.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1984

DOJ-1984-07